

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for
Reinstatement of:

Elisabeth Ann Bossingham, M.D.

Physician's and Surgeon's
Certificate No. G 69388

Petitioner

Case No.: 800-2018-046174

OAH No.: 2019060066

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the decision should be modified to reinstate Petitioner's license, and, if so, under what terms and conditions of probation to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1102 2nd St., Ste. 200. Sacramento, CA 92814. The telephone number is 916-498-9288

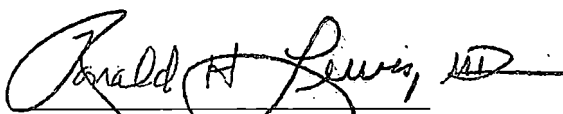
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
916-263-2451
Attention: Dianne Richards

Date: November 21, 2019



Ronald H. Lewis, M.D., Chair
Panel A

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition for Reinstatement of:

Elisabeth Ann Bossingham, Petitioner.

Case No. 800-2018-046174

OAH No. 2019060066

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on August 7, 2019, in Oakland, California.

Deputy Attorney General Brenda P. Reyes represented the Office of the Attorney General, Department of Justice.

Attorney John Sarsfield, Law Offices of Melo and Sarsfield, LLP, represented petitioner Elisabeth Ann Bossingham, who was present.

The record closed and the matter was submitted for decision on August 7, 2019.

FACTUAL FINDINGS

1. On August 2, 1990, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G69388 to petitioner Elisabeth Ann Bossingham.

2. On November 30, 2012, the Executive Director of the Board issued an order automatically suspending petitioner's certificate pursuant to Business and Professions Code section 2236.1, which allows for suspension during incarceration following a felony conviction.

On June 25, 2013, the Executive Director of the Board filed an accusation in Case Number 08-2012-223183 alleging that discipline should be imposed on petitioner's certificate. The accusation alleged the following causes for discipline: conviction of a crime substantially related to the qualifications, functions, or duties of a physician; commission of acts of dishonesty or corruption; unprofessional conduct; and a violation of Medical Practice Act.

These allegations stemmed from petitioner's 2012 federal criminal conviction based on jury verdicts finding petitioner guilty of one count of conspiracy, in violation of section 371 of title 18 of the United States Code, a class D felony, and three counts of tax evasion and aiding and abetting, in violation of section 7201 of title 26 of the United States Code, and section 2 of title 18 of the United States Code, also class D felonies. On April 30, 2012, petitioner was sentenced to federal prison for the term of 51 months, to be followed by 36 months of supervised release. She was ordered to pay \$212,314 in criminal monetary penalties, representing \$150,649 in restitution to the

Internal Revenue Service (IRS), and \$61,665 in restitution to the California Franchise Tax Board (FTB).¹

The facts and circumstances of the offenses were that from January 1, 2000 through April 2010, petitioner and her husband conspired to defraud the United States by: using offshore bank accounts, "warehouse" banking, tax avoidance schemes and trust organizations in order to shield their income from the IRS; filing fake liabilities and deeds of trust against their properties so as to appear to have no liability in the properties; filing false and fraudulent tax returns with the IRS, in that they grossly underestimated taxable income, falsely claiming that no tax was owed or that refunds were owed, in order to evade paying income tax.

3. Effective December 2, 2013, the Board issued a Decision on the accusation based on a settlement between the parties for a Stipulated Surrender of License and Disciplinary Order. Pursuant to the Decision, petitioner admitted the truth of each allegation and charge of the accusation, and the Board accepted the surrender of her certificate.

4. On July 17, 2019, petitioner filed this petition to reinstate her certificate.

¹ Petitioner's husband was assigned joint and several liability for the criminal penalties.

Petitioner's Evidence

5. Petitioner attended medical school and completed a pediatric residency at Loma Linda University.

From 1992 to 2005, petitioner was employed as a pediatrician with the Visalia Medical Group.

In 2005, petitioner started her own practice, Visalia Pediatrics & Associates, LLC. Petitioner's former husband was the business manager for the LLC, and also managed the finances of the family. Petitioner was the sole wage earner of the family and focused her attention on being a physician and not on running the business.

6. Following her conviction, petitioner was remanded to prison on April 30, 2012. She reports that with good time credit she served a total of 39 months. The court subsequently granted her an early termination of her three-year supervised release. Supervision ended on February 5, 2018.

7. Petitioner commenced marriage dissolution proceedings while in prison and has obtained a status-only judgment. She no longer has any contact with her former husband. She is involved with their two children, who are now adults.

Petitioner describes her relationship with her former husband as co-dependent, toxic, and one in which she did not stand up for herself. She allowed the scheme to not pay personal taxes to go on to avoid marital conflict. She does not offer this an excuse. She accepts responsibility for knowingly participating in the tax fraud scheme.

8. Since 2015, petitioner has been working with certified public accountant Gamaliel Aguilar to address her tax-related and financial issues.

In a letter dated April 29, 2019, Aguilar reports that petitioner has been diligent in gathering information requested by the IRS, and that she has "diligently filed all required Income Taxes from 2015 to present." He further attests that he has seen petitioner be desirous to "make things right with all required agencies and resume her practice."

Petitioner has entered into agreements with the Department of Justice, the IRS, and the FTB to make installment payments on her outstanding financial obligations.

As of November 15, 2017, the balance owing to the court was \$211,414. Petitioner has been making a payment of \$250 per month on this debt since December 2017.

As of July 2018, petitioner's owed the IRS \$451,984.37 in taxes. Petitioner has been making monthly payments of \$268 on this debt since August of 2012,

The amount of the current debt to the FTB was not established by the evidence. Petitioner has been making monthly payments of \$100 to the FTB since June 2017,

9. Petitioner relocated to Southern California following her release from prison. She obtained a certification as a phlebotomist in November 2015 but was unable to find employment in that field. In 2016, she also suffered a medical condition requiring corrective surgery and a period of recovery.

10. Since December 2016, petitioner has been employed by Key Medical Group, Inc., as a health coach in their case management team. (Key Medical Group is associated with the Foundation for Medical Care of Tulare & King Counties, Inc.) As a health coach, petitioner coordinates care services, facilitates access to services, acts as a patient liaison and advocate, and monitors to ensure services are provided.

Ann Coleman, R.N., B.S.N., is petitioner's immediate supervisor. In a letter of recommendation dated March 27, 2018, Coleman reports that petitioner's performance has been above expectations and she is a valued employee.

James W. Foxe, M.D., is the Medical Director of the Foundation for Medical Care of Tulare & Kings Counties, Inc. In a letter dated March 25, 2018, Dr. Foxe writes that he has observed petitioner work with colleagues and patients and has found her to be a professional, reliable, conscientious and caring employee. He has found her to be straightforward about "her situation," and she has earned his respect by not making excuses and attempting to move on with her life. Dr. Foxe supports the reinstatement of petitioner's certificate.

Brent Boyd is the CEO of the foundation. In a letter dated July 15, 2019, Boyd reports that he has observed petitioner be an admirable health coach, a team player, and a problem solver. He has found petitioner to speak "matter-of-factly" about her "past situation." Boyd reports of a need for physicians in his community and he supports the reinstatement of petitioner's certificate.

11. Petitioner was provided some counseling in prison, but on her own volition she has participated in consistent and ongoing therapy with Barry Sommer, MFT, LEP, since approximately December 2016. Petitioner is focused on healing herself and her relationship with her children.

In a letter dated March 12, 2018, Sommer confirms petitioner's consistent participation in treatment with him and reports that she has been responsive and faithful to his treatment recommendations. Sommer supports the reinstatement of her certificate.

12. Michael S. Barnett, M.D., was a former colleague of petitioner's. Dr. Barnett wrote a letter dated March 14, 2018, in which he highly recommended reinstatement of petitioner's certificate. Dr. Barnett is aware of petitioner's conviction and of the actions she has taken in rehabilitation.

13. Christine A. Nelson, M.D., was a former colleague of petitioner's. Dr. Nelson is currently an Associate Clinical Professor of Pediatrics at UCSF Fresno Medical Education Program. Dr. Nelson wrote a letter dated March 9, 2018, in which she strongly supports reinstatement of petitioner's certificate. Dr. Nelson is aware of petitioner's conviction and of the actions she has taken in rehabilitation.

14. Petitioner is 60 years old. Since her return to Visalia, she has developed a strong spiritual life and bases of support. She seeks to return to practice as a pediatrician with either Key Medical Group or the foundation in order to be able to earn the income necessary pay off her debts. She does not wish to operate her own private practice.

15. Petitioner provided certificates showing completion of 51 AMA PRA Credits in Pediatrics in 2019.

LEGAL CONCLUSIONS

1. A licensee whose certificate has been revoked for unprofessional conduct may petition for reinstatement after three years. (Bus. & Prof. Code, § 2307, subd. (b)(1).) Petitioner's certificate was revoked by decision effective December 2, 2013. (Finding 3.) The petition was filed in July 2017 (Finding 4), and is therefore compliant with the time prescribed by law.

2. In a proceeding for the restoration of a license, the burden rests on the petitioner to prove that he or she is rehabilitated and is entitled to have his or her license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The showing of rehabilitation must be sufficient to overcome the former adverse determination; the standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. In determining whether to reinstate a revoked certificate, consideration is to be given to all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. (Bus. & Prof. Code, § 2307, subd. (e).)

4. The factors to be considered in determining whether a licensee has been rehabilitated include the following: the nature and severity of the act or crime involved; subsequent misconduct; the amount of time that has elapsed since the misconduct took place; evidence of rehabilitation; whether the conviction has been expunged; and, whether the licensee has complied with the terms of probation. (Cal. Code Regs., tit. 16, §§ 1360.1, 1360.2.)

5. Consideration has been given to the evidence of rehabilitation presented by petitioner. To her credit, she was compliant with the terms of her supervised release, and she obtained an early release from supervision. She has set up payment schedules to address her restitution obligations to the court, to the IRS and to the FTB. She has obtained steady employment. She is working on addressing the personal issues in her life which underlined her criminal conduct. For all of these things she is to be commended. At the same time, it must be recognized that the rehabilitation

process can only accurately be measured by petitioner's conduct after her release from supervision in February 2018. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) That period has been less than two years. In addition, in light of the seriousness of her misconduct and the dishonesty associated with it, a longer period of exemplary conduct is required in order to fully assess rehabilitation.

The primary purpose of this proceeding is to protect the public, not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority, the Board's highest priority is the protection of the public. (Bus. & Prof. Code, § 2229, subd. (a).) On this record, petitioner has failed to meet her burden of showing by clear and convincing evidence that she is rehabilitated to the extent that would support the reinstatement of her physician's and surgeon's certificate. For that reason, public protection compels denial of the petition.

ORDER

The petition of Elisabeth Ann Bossingham for reinstatement of her physician's and surgeon's certificate is denied.

DATE: August 28, 2019

DocuSigned by:

Melissa G. Crowell

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MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings